



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD (C-14J)  
CHICAGO, IL 60604-3590

April 30, 1999

Andrew W. Hogarth, Assistant Chief  
Environmental Response Division  
Michigan Department of Environmental Quality  
First Floor, Knapp's Office Centre  
300 South Washington Square  
Lansing, Michigan 48933

Dear Mr. Hogarth:

Enclosed is an original signed copy of the Memorandum of Understanding between the United States Environmental Protection Agency and the Michigan Department of Environmental Quality regarding the Allied Signal Incorporated Site located at 7819 West Jefferson, Detroit, Michigan.

Sincerely,

Steven J. Murawski  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 5

Enclosure

**MEMORANDUM OF UNDERSTANDING BETWEEN THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND THE  
MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY**

This Memorandum of Understanding (MOU) is entered into between the Acting Regional Administrator, United States Environmental Protection Agency (USEPA), Region 5, and the Director, Michigan Department of Environmental Quality (MDEQ), in order to facilitate Brownfield redevelopment and to transfer the lead for oversight of Resource Conservation and Recovery Act (RCRA) Corrective Action (CA) Requirements from the USEPA Underground Injection Control (UIC) Program and the USEPA RCRA Program to the MDEQ for the Allied Signal Incorporated (Allied) Site located at 7819 West Jefferson, Detroit, Michigan, formerly known as the Detroit Coke Corporation (Detroit Coke) Site and legally described in Attachment A (Property).

**I. PURPOSE**

The USEPA and the MDEQ agreed to mutually exercise their authorities to facilitate the productive redevelopment of Brownfields in Michigan through the entry of a Superfund Memorandum of Agreement for Brownfield Redevelopment dated July 10, 1996. This site-specific MOU is similarly intended to promote Brownfield Redevelopment in Michigan and to memorialize the transfer of the lead for oversight of the Property under the authority of USEPA's UIC and RCRA Programs to the MDEQ.

**II. PARTIES**

The following officials, or their representatives, are Parties to this MOU:

Russell Harding, Director, Michigan Department of Environmental Quality

David Ullrich, Acting Regional Administrator, United States Environmental Protection Agency,  
Region 5

### III. AUTHORITY

USEPA enters into this MOU in furtherance of its statutory and regulatory responsibilities and authority under RCRA CA requirements in current enforceable UIC permits and other applicable Federal laws and regulations, 42 U.S.C. §§300f-300j-26; 42 U.S.C. §§6901-6992k; 40 C.F.R. Part 124; 40 C.F.R. Part 144; 40 C.F.R. Part 264; 40 C.F.R. §270.60(b). MDEQ enters into this MOU in furtherance of its statutory and regulatory responsibilities and its delegated authority under RCRA, 42 U.S.C. §6926; 40 C.F.R. Part 272, Subpart X; Mich. Comp. Laws §§324.11101-324.1152 (1997); Mich. Comp. Laws §§324.20101-324.20142 (1997).

### IV. BACKGROUND

1. The Property is a former coking facility occupying approximately 80 acres at the confluence of the Detroit and Rouge Rivers in southwest Detroit, Michigan, adjacent to the Zug Island industrial complex. In the past, Detroit Coke produced waste ammonia liquor as a by-product of the coking of coal and disposed of the ammonia liquor on-site into three Federally permitted UIC wells, UIC Permit Numbers MI-167-1W-0003, MI-167-1W-0004, and MI-167-1W-0005.
2. As part of the USEPA UIC permits, Detroit Coke was required to comply with RCRA CA requirements under the authority of the USEPA UIC and RCRA Programs, 42 U.S.C. §§300f-300j-26; 42 U.S.C. §§6901-6992k; 40 C.F.R. Part 124; 40 C.F.R. Part 144; 40 C.F.R. Part 264; 40 C.F.R. §270.60(b).
3. In September 1990, Detroit Coke closed the coking operations at the Property. Afterward, Detroit Coke used the three permitted UIC wells to dispose of ammonia liquor which remained on-site in the above-ground storage tanks at the time operations ceased, and to dispose of rainwater which collected on-site. Recently, no fluids, other than those used for testing purposes by Detroit Coke and its contractors, have been disposed into the UIC wells.
4. In June 1995, Detroit Coke plugged UIC well #1, UIC Permit Number MI-167-1W-0003. On March 26, 1996, Detroit Coke applied to USEPA for the renewal of its two remaining UIC permits at the Property, Permit Numbers MI-167-IW-0004 and MI-167-IW-0005. In the UIC permit renewal applications, Detroit Coke requested that USEPA authorize the permits to allow for the disposal of potentially hazardous contaminated waters on-site as part of the remediation

of the Property and for continued disposal of rainwater that collects on-site. On August 15, 1996, Detroit Coke submitted an addendum to the UIC permit renewal applications, requesting that the new permits authorize the use of the wells for the commercial disposal of liquid non-hazardous wastes. Subsequent failure of Detroit Coke to submit requested information regarding its addendum for the commercial use of the wells prevented USEPA from issuing permits authorizing such use. On February 13, 1998, Detroit Coke withdrew its request for USEPA to issue permits authorizing the commercial use of the wells.

5. On February 23, 1998, at the request of the City of Detroit (City), the MDEQ Environmental Response Division (ERD) mobilized a preliminary investigation of the Property to assess the contamination level and determine the feasibility of reusing the Property for other industrial purposes. ERD's continuing investigation resulted in two reports that summarized the investigation's findings and further characterized the contamination at the Property.

6. In anticipation of ownership of the Property, Allied submitted an application to the USEPA UIC Program to request a transfer of ownership status from Detroit Coke to Allied of the UIC permits, Permit Numbers MI-167-IW-0004 and MI-167-IW-0005. Allied also intends to apply for renewal of the permits for the disposal of potentially hazardous contaminated waters on-site as part of the remediation of the Property.

7. The USEPA UIC Program will execute a minor modification of the UIC permits, Permit Numbers MI-167-IW-0004 and MI-167-IW-0005, to reflect the change in ownership status from Detroit Coke to Allied in accordance with 40 C.F.R. §144.41. At a later date, when the MDEQ has executed an enforceable agreement with or issued an enforceable order against the responsible parties (RPs), USEPA will concurrently issue new UIC permits to Allied with the RCRA CA requirements removed.

8. Because the City and the MDEQ believe that the Property investigation shows a feasibility for reuse and can be characterized as a Brownfield Redevelopment Project, the City has expressed an interest in ensuring an expedited remediation of the Property for reuse by several industrial entities.

9. This MOU is an outgrowth of the need for the Parties to collaborate in order to ensure the efficient, effective, and expedient remediation of the Property in accordance with Federal and State statutory and regulatory requirements.

## **V. MECHANISM FOR TRANSFER OF CORRECTIVE ACTION AUTHORITY**

10. The Parties agree to transfer the lead for oversight of the Property from USEPA to the MDEQ upon the execution of an enforceable agreement or issuance of an enforceable order with the RPs at the Property for the remediation of the Property. The MDEQ's enforceable agreement or order must include the elements of this MOU and the Redevelopment Plan for the Property agreed to by the MDEQ and the RPs.

11. Concurrent with the execution of an enforceable agreement with or issuance of an enforceable order against the RPs, USEPA will formally remove the RCRA CA requirements from the UIC Permit Numbers MI-167-1W-0004 and MI-167-1W-0005 and transfer the lead for oversight of the Property to the MDEQ under the terms of this MOU. When USEPA formally removes the RCRA CA requirements from the UIC Permits, it will notify the MDEQ by letter.

## **VI. GENERAL PROVISIONS**

12. Each Party to this MOU is responsible for ensuring that its obligations under the MOU are met.

13. The Parties commit to complying with applicable provisions of the Great Lakes Water Quality Initiative and ensuring consistency with the Detroit River Remedial Action Plan, the Rouge River Remedial Action Plan, and the Great Lakes Water Quality Agreement when developing and implementing a remediation of the Property with respect to contaminated ground water and sediment.

14. The Parties acknowledge that Michigan's CA Program pursuant to Part 111 of the Natural Resources and Environmental Response Act, 1994 P.A. 451, as amended (NREPA), which incorporates the remediation provisions of Part 201 of the NREPA and the MDEQ's remediation program pursuant to Part 201 of the NREPA, provides for a remediation that is protective of human health and safety, welfare, and the environment, 42 U.S.C. §6926; 40 C.F.R. Part 272, Subpart X; Mich. Comp. Laws §§324.11101-324.1152 (1997); Mich. Comp. Laws §§324.20101-324.20142 (1997).

15. Under the terms of this MOU, the Parties agree that "transfer [of] the lead for oversight of the Property" shall mean "transfer [of] the lead for the oversight of remediation of and

enforcement at the Property related to the RCRA CA requirements in the UIC Permit Numbers MI-167-1W-004 and MI-167-1W-005."

16. The MDEQ, in conjunction with the Michigan Department of Attorney General, intends to either execute an enforceable agreement with or issue an enforceable order against the RPs that meets the provisions of this MOU and that requires a remediation of the Property consistent with Part 201 of the NREPA, Mich. Comp. Laws §§324.20101-324.20142 (1997). When the MDEQ executes an enforceable agreement or issues an enforceable order in accordance with this MOU, USEPA agrees to remove the RCRA CA requirements from the UIC permits and to transfer the lead for oversight of the Property to the MDEQ. When USEPA formally removes the RCRA CA requirements from the UIC Permits, it will notify the MDEQ by letter.

17. The MDEQ commits to allowing USEPA to participate in the development of the enforceable agreement or order that will be used to implement the remediation of the Property. The agreement or order will require the RPs to:

- a. Collect sufficient information to identify sources of contamination, determine the nature and extent of contamination, and identify relevant contaminant transport and exposure pathways;
- b. Identify conditions requiring remediation or control; and
- c. Develop and implement a Work Plan for the Property that achieves the remediation criteria specified in Part 201 of the NREPA, Mich. Comp. Laws §§324.20101-324.20142 (1997).

18. USEPA will coordinate with the MDEQ in USEPA actions related to the UIC wells.

19. From the effective date of the MOU, USEPA will not enforce the RCRA CA requirements in the UIC Permit Numbers MI-167-1W-004 and MI-167-1W-005 provided that the MDEQ meets all of its obligations under this MOU.

## **VII. BROWNFIELD AND FUTURE ENFORCEMENT**

20. Both Parties recognize that remediation and redevelopment of this contaminated Property could provide significant benefits to the protection of human health and safety, the environment and the economy of local communities surrounding the Property. Both Parties also recognize this Property as a Brownfield Site. Accordingly, USEPA and the MDEQ agree to mutually exercise their authorities to facilitate the productive redevelopment of this Property.

21. In support of promoting and implementing USEPA's Brownfields Initiative and of redeveloping this Property, and in consideration of the MDEQ's execution of an enforceable agreement with or issuance of an enforceable order against the RPs under this MOU, USEPA does not plan or anticipate taking any future Federal action related to the environmental remediation of this Property against future owners or operators of the Property, provided such owners or operators satisfy the following conditions:

- a. the owner or operator discloses an adequate Baseline Environmental Assessment (BEA) to the MDEQ pursuant to Part 201 of the NREPA, Mich. Comp. Laws §§324.20101-324.20142 (1997), or obtains similar liability protections pursuant to an agreement with the MDEQ and the Michigan Department of Attorney General;
- b. the owner or operator is not otherwise liable for environmental contamination existing on the Property;
- c. the owner or operator remains in compliance with the requirements of Section 20107a of the NREPA and its rules, Mich. Comp. Laws §324.20107a (1997), and with due care obligations under federal law; and
- d. the owner or operator conducts its activities on the Property consistent with any enforceable agreements or orders with the MDEQ and the Michigan Department of Attorney General regarding remediation of this Property.

Notwithstanding this Paragraph, if under exceptional circumstances, conditions at the Property are such that the Property poses an imminent and substantial endangerment to public health or welfare or an emergency situation, or in the event an owner or operator fails to substantially comply or conduct its activities consistent with this Paragraph, USEPA may, at its discretion or

upon referral from the MDEQ, pursue Federal action. USEPA will consult with the MDEQ and give the MDEQ an opportunity to correct such non-compliance with the provisions of this Paragraph, prior to making a determination that Federal response action is necessary at this Property.

#### **VIII. INFORMATION SHARING**

22. Each Party to this MOU agrees to maintain a high level of cooperation to ensure that successful and effective coordination between the Parties is maintained to meet the objectives of this MOU. Cooperation includes prompt notification to each Party of any changes occurring or decisions being made about remediation at the Property.

23. The MDEQ commits to providing USEPA with two (2) copies of all letters, proposals, workplans and reports regarding the remediation of this Property within three (3) days of receipt or issuance by the MDEQ, and at a minimum, before the documents are released to the public. If the information that the MDEQ provides to USEPA under this Paragraph is available in electronic format, the MDEQ also commits to providing the information to USEPA electronically.

24. The Parties shall request any person who submits information related to the remediation of the Property or to the application for UIC permits at the Property to simultaneously provide the same information to the other Party. If the information submitted under this Paragraph is available in electronic format, the Parties shall request that the information be submitted to the other Party electronically.

25. USEPA commits to providing the MDEQ with copies of future UIC permit application information regarding this Property, including letters, proposals, workplans, and reports developed by USEPA or by the permit applicant.

#### **IX. PUBLIC PARTICIPATION**

26. The Parties recognize the importance of public participation in development of plans for remediation and redevelopment activities at this Property.

27. The MDEQ agrees to cooperate with USEPA's attempts to ensure that adequate public participation is incorporated into any USEPA UIC permitting action at this Property, as required



by Federal or State statutes, regulations or guidance. Accordingly, the MDEQ will provide at least one representative to discuss or answer questions about remediation at the Property during public meetings related to the USEPA UIC permitting process.

28. The MDEQ commits to holding public meetings regarding the remediation of the Property, as required by Federal or State statutes, regulations or guidance. The first public meeting will be held prior to USEPA's transfer of the lead for oversight of the Property to the MDEQ. At the first public meeting, USEPA and the MDEQ will explain USEPA's transfer of the lead for oversight of the Property to the MDEQ, the results of the MDEQ's two reports that summarize the findings and contamination at the Property, and the proposed plans for remediation of the Property. If the MDEQ has not approved the technical details of the proposed interim measures prior to the first public meeting, a second joint public meeting will be held to fully explain the interim measures once the MDEQ finalizes the technical details related to the implementation of the interim measures. The MDEQ will invite USEPA to participate in all public meetings the MDEQ holds regarding the remediation of the Property.

29. The MDEQ will develop and distribute Site Information Bulletins, as appropriate, describing the status of activities and proposed actions associated with the remediation of the Property to all residents within a one (1) mile radius of the Property and other interested parties. All Site Information Bulletins will include a name and phone number from the MDEQ and the City of Detroit for interested parties to contact. At a minimum, Site Information Bulletins will be developed which:

- a. announce USEPA's transfer of the lead for oversight of the Property to the MDEQ through this MOU;
- b. notify the public about how to obtain information related to the remediation of the Property pursuant to Paragraph 32; and
- c. inform the public about all of the scheduled public meetings related to the remediation of the Property.

30. The Parties agree that it is in the public interest that all scientific data arising out of any activities approved by the MDEQ or its agents be made public. Therefore, such data shall be

made public in accordance with Paragraph 32 as soon as publication would not prejudice actions undertaken by the MDEQ.

31. While public sharing of scientific data resulting from MDEQ-approved activities will be the general policy of the Parties, the Parties recognize that written or oral communication related to the MDEQ's actions may be undertaken in anticipation of litigation. Therefore, attorney work product, attorney-client communications, communications subject to joint enforcement, or communications otherwise subject to privilege from disclosure may be withheld, as appropriate, under applicable Federal or State law or regulation.

32. All written information released under this Section of the MOU shall be placed in the following four (4) repositories for public review:

- a. City of Detroit Mini-City Hall, 7744 W. Vernor Hwy.
- b. City of Detroit Mini-City Hall, 2569 S. Schaeffer
- c. Del Ray Citizens District Council, 7914 W. Jefferson
- d. River Rouge Mayor's Office

33. Nothing in this Section of the MOU shall be construed as prohibiting or restraining the Parties from releasing any records. Furthermore, nothing in this section of the MOU shall be construed as prohibiting or otherwise restraining the release of records required by Federal or State law or regulation.

#### **X. DISPUTE RESOLUTION**

34. This section shall apply to any dispute arising under any section of this MOU unless specifically exempted.

35. The Parties shall use their best efforts, in good faith, to informally resolve all disputes or differences of opinion between the Parties at the Staff level.

36. If a dispute arises concerning this MOU that one of the Parties believes cannot be settled informally, the Party shall send written notification to the other Party identifying the issue in dispute and explaining why the dispute cannot be informally resolved.

37. If the dispute concerning the MOU has not been resolved within twenty (20) days of the receipt of written notification from the other Party, the dispute shall be referred to the level of officials signing this MOU for resolution.

#### **XI. MODIFICATION AND TERMINATION**

38. This MOU may only be modified by the mutual written agreement of both Parties.

39. This MOU can be terminated by:

- a. mutual written agreement of both Parties, or
- b. withdrawal by one of the parties upon thirty (30) days written notice to the other Party. The MOU shall remain in full force and effect until the thirty (30) days has elapsed.

#### **XII. LIMITATION**

40. Nothing in this MOU shall be construed as obligating the United States and the State of Michigan or any officers, agents or employees of the United States and the State of Michigan to expend any funds for response activities, remediation or corrective action at the Property in excess of appropriations authorized by law.

41. The rights and responsibilities contained in this MOU:

- a. are subject to the availability of funding;
- b. shall not create any legal or enforceable rights for any third party; and
- c. shall not be the basis of any third party challenges or appeals.

### **XIII. RESERVATION OF RIGHTS**

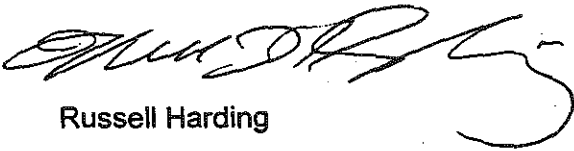
42. Notwithstanding any provision in this MOU, the Parties reserve any and all rights or authority not transferred by this MOU. Nothing in any provision of this MOU limits or affects the authority not transferred by this MOU or the ability of either Party to take any action authorized by law.

### **XIV. EXECUTION AND EFFECTIVE DATE**

43. This MOU may be executed in counterparts. A copy with all of the originally executed signature pages affixed shall constitute the original MOU.

44. The effective date of this MOU shall be the date of the signature of the last Party to sign.

Signatures for:



Russell Harding

Director, Michigan Department of Environmental Quality



David Ullrich

Acting Regional Administrator, United States Environmental Protection Agency, Region 5

**APR 29 1999**